

MINUTES

INSOLVENCY LAW COMMITTEE OF THE BUSINESS LAW SECTION OF THE STATE BAR OF CALIFORNIA

September 5, 2003

The regularly scheduled meeting of the Insolvency Law Committee of the Business Law Section of the State Bar of California was held on September 5, 2003 at the Anaheim Hilton Hotel.

The following members were present in person:

Peter Bronson
Lisa Fenning
Rob Harris
Sandy Lavigna
Tracy Schweitzer
Dave Shemano

The following members attended telephonically:

Molly Baier
Bob Franklin
Radmila Fulton
Judy Gibbs
Greg Lunt
Donna Parkinson
Paul Pascuzzi
Kathy Phelps
Dan Schechter
Cliff Stevens
Geraldine Valdez

Colin Wied, whose membership on the Committee begins this fall, also attended.

Rob Harris called the meeting to order at 9:10 a.m.

1. Approval of Minutes: July 25, 2003.

The minutes of the July 25, 2003 meeting were amended to substitute the name of Peter Bronson for Mark Porter's in the final sentence of section 7(b). The minutes were approved unanimously as so amended.

2. Announcement of Confirmation of ILC Secretary for 2003-04.

It was announced that Paul Pascuzzi has officially been elected as ILC Secretary for 2003-04.

3. Discussion of Videoconferenced Meetings.

The Committee discussed the pro's and con's of making facilities available for attending meetings via videoconference. It was noted that the July videoconferencing was successful, but would have been more effective if attendees had looked more at the cameras. Geraldine Valdez suggested that all future meetings offer both video and call-in options, and that the videoconference locations be rotated.

4. Discussion of Membership Issues.

Rob Harris announced that the Executive Committee had approved all newly appointed ILC members, and had approved appointment of a 25th member.

The Committee discussed Stewart Chambers' application for membership. It was pointed out that Tracy Schweitzer's and Judy Gibbs's terms expire in 2004, not 2003, and that as a result, consideration of Mr. Chambers's application must be postponed. Judy Gibbs will call and interview him.

The Committee decided that next year, new members will be invited to the September meeting and will receive meeting packages.

5. Subcommittee Organization: Legislation, Education, Publications, and Constituency/Outreach/Website.

The Committee discussed organization of the four new subcommittees. Rob said that after the subcommittee rosters are finalized (*i.e.*, after new members are given their subcommittee assignments), sub-list-servs should be set up.

Vice Chairs of the subcommittees were appointed as follows:

Education: Radmila Fulton

Constituency/Outreach/Website: Bob Franklin

Publications: Dave Shemano

Legislation: Greg Lunt

The Committee discussed including updates on current subcommittee projects on the ILC website, and Geraldine and Bob were designated to coordinate same.

6. Programs and First Report from Education Subcommittee.

A. Radmila was welcomed as liaison to the Programs and Publications Committee. Dave Shemano was appointed as separate liaison for publications, with Radmila covering programs. Rob will inform Alan Gutterman and ExComm that ILC has separate liaisons for these two functions.

B. Radmila and Judy reported on the bankruptcy/family law program at the State Bar Annual Meeting. The program was sold out, with attendance of approximately 50 persons, and well received. The audience was split between family law and bankruptcy practitioners (although the bankruptcy lawyers seemed fairly inexperienced, based on their questions). Judy said the evaluation forms uniformly gave the speakers high marks of "4" or "5". Radmila said the success of the presentation bodes well for future "crossover" programs; and that basing the program on use of a hypothetical fact pattern worked well.

C. There was discussion about the Winter SEI in Santa Monica, set for January 23-25, 2004. The Committee will propose two programs: a bankruptcy primer for business lawyers to be prepared by Geraldine and Peter, and a program on asset sales to be prepared by Mark Porter. It was pointed out that program planning forms are due September 23.

D. There was discussion concerning whether the Committee should participate in the State Bar 2004 Spring Meeting, which (a) is being presented in conjunction with the California Bankers Association, and (b) conflicts with the Bankruptcy Forum conference in Yosemite. Radmila will ascertain whether the CBA already has its programs scheduled and will explore the possibility of presenting a joint program; and she will talk to Mark Porter about the possibility of presenting a program. Donna Parkinson volunteered to assist. Lisa Fenning suggested that the best approach would be to propose a joint program that would be publicized as part of the CBA agenda. Molly agreed to set up a conference call with her colleague Ted Kitada, Radmila, Lisa, and Sandy Lavigna. There was also discussion about possibly proposing, for the Spring Meeting, a program on fraud in bankruptcy cases.

Remaining Spring Meeting topics [Agenda Items D(iii) and D(iv)(a), (b)] were tabled.

E. Rob announced that there is a January 2004 deadline for submitting program information for the September 2004 State Bar Annual Meeting.

7. Website Report and Constituency Outreach Project; First Report from Constituency/Outreach/Website Subcommittee..

A. E-Mail Lists and Reciprocal Program Announcements.

Reports were given on progress with regard to the various bar groups:

Beverly Hills: Peter Bronson will contact the Beverly Hills Bar Assn. regarding re-transmission of the e-mail broadside to Bankruptcy Section members.

Los Angeles: Sandy will continue to work with the L.A. County Bar Association toward getting out a newsletter including an ILC announcement.

Alameda/Contra Costa Counties: Bob Franklin reported that there have been numerous responses to the solicitation for inclusion on our constituency list.

Central California: Cliff Stevens will ask the local bar to transmit a solicitation to its members with an appropriate link.

South Bay: Rob reported that there have not been positive results from SCCBA contacts. However, Rob's colleague Michael Malter and Judge Marilyn Morgan had provided an Inn of Court addressee list, which has been forwarded to Susan Orloff.

Other reports were tabled due to absences from the meeting.

B. Review of Report on Status of Website, Content, and Revisions.

Discussion of this topic was tabled due to Mike Buckley's absence.

C. Status of Migration of BLS Website to State of California Site.

Rob discussed progress of the migration, as detailed in the meeting materials.

Peter is to follow up with Michael Mullen to make certain that all minutes of ILC meetings are on the website. Paul Pascuzzi, who served as secretary *pro tem* for the July 25 meeting, will e-mail the minutes of that meeting to Mr. Mullen.

8. Progress Reports on Current Projects and First Report from Legislation Subcommittee.

A. A.B. 182 –Automatic Re-Indexing of California Exemptions.

Rob reported that this bill is finally ready to go to the Governor, having passed with only Sen. Tom McClintock opposing.

B. Badges of Fraud A.L.P.

Larry Doyle is now seeking sponsors. Colin (and possibly Judy) will contact Larry regarding possible sponsors. This matter will have to be taken up by the 2004 Legislature.

9. New Projects.

A. Report on Partnership Law Committee ALP.

Rob said it had been made clear that the Partnership Law Committee does not view its ALP as changing existing law. Rob will speak further with the Partnership Law Committee, but this item will not appear on the October ILC meeting agenda.

B. Updated Model Real Estate Order – Creation of Instructions for Use and Findings.

Rob suggested that there is a question whether it is necessary to break the model order into separate findings/conclusions and order. Paul said a “broken up” set is in circulation. Judy is attempting to locate an appropriate title company contact with whom to discuss the matter. Following the foregoing discussion, this matter was tabled to the next meeting.

C. Continued Discussion of C.C.P. § 697.530 – Perfecting Lien on California Assets of Foreign Corporation.

Geraldine will contact the UCC Committee and solicit its views.

D. Continued Discussion of H.R. 975.

Lisa said it seems unlikely that this legislation will be enacted this year. Rob will clarify the scope of our actions; anyone interested in assisting Rob should e-mail him.

E. Continuing Discussion of C.C.P. § 708.110 et seq. (Secret Liens and Registering the Same).

It was decided that Geraldine would communicate with Peter concerning the results of her conversation with the UCC Committee [see section 9(C) above], following which Peter would circulate a recap of the issues. Colin Wied suggested it might be advisable to contact the CLRC. Following the foregoing discussion, this matter was tabled to the October meeting.

10. Publications and First Report from Publications Subcommittee.

A. Mandatory: Article for Summer Issue of Business Law News.

Rob pointed out that the deadline for submission of an initial draft is June 1, 2004, with final draft due July 15, 2004. Members should e-mail Geraldine Valdez and Dave Shemano with potential topics, for discussion at the October meeting. Rob will circulate both Tom Phinney’s published Business Law News article and publication guidelines. Dave will check into how the publication is circulated.

B. Mandatory: California Legislative Bulletin Annual Report/Annual Report to ExComm.

Rob will prepare an update regarding AB 182. Anyone who has had an ALP or legislative comment approved should do the same.

C. Optional: Annual Review.

Rob reported that an initial draft is due December 15, 2003, and final draft January 31, 2004 (with an intended publication date of March 1, 2004). Dan Schechter expressed willingness to prepare an annual review, but noted that the one he prepared for 2003 still has not been published.

11. Legislation Subcommittee's New Bill Report.

A. State Bills.

Dan Schechter said there are no developments to report.

B. Federal Bills.

Discussion took place concerning:

- i. S. 832 (to amend preference and fraudulent conveyance provisions of the Bankruptcy Code): Paul reported that this bill is still in committee in the Senate. He will talk to Mark and report further on the bill's status at the next meeting.
- ii. H.R. 2 (privatization of IRS collections): Paul said this bill has been passed and signed into law, apparently without the privatization provision.
- iii. H.R. 2120 (netting provisions): Paul reported that this bill was referred to the subcommittee on commercial and administrative laws in June.

C. Efforts To Abolish State Bulk Sales Laws.

The Committee voted to join with the UCC Committee in trying to abolish Article 6 of the UCC. Dan (who had to leave the meeting prior to this discussion) will be asked to take the lead role if he is willing to do so; otherwise someone else will be appointed. Judy said she is willing to assist in dealing with State Bar forms.

12. Thanks to Departing Members and Chair.

Rob thanked departing members Kathy Phelps, Tom Phinney, Eric Nyberg and Ben Murphy for their service on the Committee and all their hard work.

Geraldine expressed the Committee's appreciation to Rob for an excellent year as Chair.

Rob said he would be reporting to ExComm concerning the year's accomplishments, including: Publication of Tom's article on alter ego; Dan's annual review article; four seminars presented; our carrying of AB 182; our active involvement in revision of AB 2473 (treatment of gift certificates in bankruptcy); our comments on AB 690; and our presentation of an ALP regarding restoring "badges of fraud" to the UFTA.

In addition, Rob will report that the Committee has worked with judges and title companies on refining the Model Real Estate Order; has greatly increased its outreach; has successfully divided into subcommittees, specified their duties, and elected Vice Chairs for them; and is working on such future projects as consideration of secret liens, follow-up regarding bankruptcy reform legislation, and possibly presenting joint programs with the ABA and/or CBA.

13. Next Meeting.

The next meeting will take place October 15, 2003 at 1:00 p.m. in Geraldine Valdez's office in San Diego.

14. Meeting adjourned.

The meeting was adjourned at approximately 12:45 p.m.

Peter Bronson
Secretary